IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

MFA.No. 159 of 2002(D)

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OPMV.931/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA

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APPELLANT: (3RD RESPONDENT)

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THE NEW INDIA ASSURANCE CO.LTD.,
REPRESENTED BY ITS ASSISTANT ADMINISTRATIVE
OFFICER, REGIONAL OFFICE, KANDAMKULATHY TOWERS,
M.G.ROAD, ERNAKULAM.

BY ADV. SRI.VPK.PANICKER

RESPONDENTS: (PETITIONER AND RESPONDENTS 1, 2 & 4)

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1. M/S.THRISSUR HIRE PURCHASE,
USHUS BUILDINGS, WEST FORT, THRISSUR,REPRESENTED
BY MANAGING PARTNER, SRI.A.I.JOHN, AGED 49 YEARS,
S/O.ITTY MATHEW, ARIMBOOR HOUSE, CHEROOR ROAD,
CHEMBUKKAVU, THRISSUR.

2. M.PERIYASWAMY, S/O. MUTHUSWAMY,
NO.480, TRICHY MAIN ROAD, SALEM-636 006.

3. PALANIYAPPAN, S/O.THIRUMALAI,
NALLIAYA COUNTER COMPOUND, 67-C, NETTIMEDU,
SALEM-636 002.

4. K.K.MOHANAN, S/O. KOCHUKUTTAN,
KUTTIPARAMBIL HOUSE, VARAKKARA, AMBALLUR,
THRISSUR DISTRICT-680 325.

BY ADV. SRI.T.N.MANOJ
SRI.DINESH R.SHENOY
SRI.DINESH MATHEW J.MURICKEN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.PADMANABHAN NAIR, J.**

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M.F.A.No. 159 of 2002

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Dated this the 8th October, 2007.

**J U D G M E N T**

The 3rd respondent, Insurer, in O.P.(M.V.) No.931/1993, on the file of the Motor Accidents Claims Tribunal, Irinjalakuda, is the appellant. This appeal is filed against the award passed by the Tribunal, by which the appellant was made liable for an amount of Rs.20,297/=, which was being claimed as property damage sustained to the vehicle owned by the 4th respondent.

2. The short facts necessary for the disposal of the case are as follows. The first respondent, Financier by name, M/s.Thrissur Hire Purchase, filed the original petition claiming compensation for the damages sustained to an auto rickshaw bearing Registration No.KL-8/A 6553. In the Original Petition, in answer to Coloumn No.25, regarding other particulars, it was averred that the damaged vehicle remained under hire purchase agreement, which was entered into by the first respondent with the 4th respondent, who was the RC owner of the first respondent firm. It was further averred that Hire purchase liability with the first respondent was noted in the

Registration Book, and inspite of repeated demands of the first respondent firm, 4th respondent refused to file an application for compensation. Hence this application was filed by the petitioner firm making registered owner as the respondent. Again, in answer to coloumn No.26, it was averred that the first respondent requested 4th respondent to file an application for compensation, as he being the R.C. Owner of the auto rickshaw. It was averred that though the 4th respondent promised to file an application, in fact, he did not file an application, and it came to the notice of the first respondent, few days prior to the filing of the application. It was further averred that the first respondent, firm, is the next interested person entitled to apply for compensation.

3. It was averred that on 17.4.1992, at about 2.15 a.m., while the auto rickshaw was proceeding in slow speed through its correct side, the goods vehicle bearing Registration No.TAL 1780, came in a rash or negligent manner, and hit against the auto rickshaw, causing damages. It was averred that passengers travelling in the auto rickshaw also sustained injuries. It was averred that the damages to the auto rickshaw was the direct result of the rash or negligent driving of the lorry by the second respondent.

4. Appellant filed a written statement contending that original petition is not maintainable. It was admitted that the vehicle was covered with a valid policy of insurance issued by the appellant. It was contended that five persons were travelling in the auto rickshaw, and hence, there was a violation of policy conditions. It was further contended that Insurer is entitled to contest the matter on merits, in view of the conditions in the policy. It was specifically contented that petitioner, M/s.Thrissur Hire Purchase, was not the registered owner of the auto rickshaw, and as such, the petitioner has no cause of action against the respondents. It was also contended that there was no privity of contract between the first respondent and the petitioner. The registered owner had also filed an original petition as O.P.(M.V.) No. 938/1993, and that application was also pending. Neither the owner nor the driver of the lorry informed the insurer about the incident, and there was violation of policy conditions. It was further contented that Insurer was not bound by the agreement entered into by the first respondent and 4th respondent. It was further averred that even if 4th respondent can have any cause of action, that is only against the owner, and such an action is to be maintained before the Civil Court, and not before the Motor Accidents Claims Tribunal. It was specifically contended that Tribunal has no jurisdiction to entertain

the claim made on the basis of a hire purchase agreement. The quantum of damages claimed was also denied. The allegation that the driver of the lorry was driving the vehicle in a rash or negligent manner was denied. It was contented that the first respondent is not entitled to get any compensation. It was further contented that in addition to O.P.(M.V.) 938/93 filed by the 4th respondent, five more claim petitions filed by the Insurer are also pending, and hence prayed for dismissal of the petition.

5. The Tribunal found that in view of the terms contained in Annexure-A1 Hire Purchase agreement between respondents 1 and 4, first respondent is the owner of the vehicle, till the loan amount was fully repaid. It was further found that 4th respondent also filed an affidavit on 30.6.2001, expressing his consent to award compensation to the petitioner. Hence, it was found that the first respondent is entitled to maintain an action. It was further found that the total amount of repair charges will come to Rs.20,297/=, and the appellant is liable to pay the same. Challenging that award, this appeal is filed.

6. The learned counsel, Sri.V.P.K.Panicker, appearing for the appellant has argued that the finding of the Tribunal that Hire Purchase Company, which is only a financier, has locus standi to file such a petition is illegal and unsustainable. It is argued that the word '*owner*' is defined under the Motor Vehicles Act, which specifically deals with the hire purchase agreement also. It is argued that a person who purchase the vehicle under the hire purchase agreement called hirer, is the registered owner, and real owner, though he has not fully paid the sale consideration. It is argued that the averments in the original petition itself will show that respondent has filed this petition not as a owner, but on the strength of hire purchase agreement. Even if the affidavit filed by the 4th respondent is treated as a letter of subrogation, such a person is not entitled to maintain an action for compensation. It is argued that there is no basis for fixing the quantum, and there is no material to prove that the appellant is entitled to get compensation.

7. The learned counsel, Sri.T.N.Manoj, appearing for the first respondent has argued that the definition of the word '*owner*' given under the Motor Vehicles Act is not an exhaustive definition. It is only an inclusive definition. It is argued that Section 2 of the Motor

Vehicles Act, which deals with the definition clause, itself starts with the words, **'unless the context otherwise requires'**, which means that the meaning of the definition of any word given under Section 2 of the Motor Vehicles Act, is not exhaustive. It is argued that in view of the provisions contained in Annexure-A1, especially, clause 23 of the Hire Purchase agreement, the only person competent to maintain an action is the first respondent. It is further argued that even assuming that 4th respondent had a right to claim compensation, that right was assigned in favour of the first respondent. It is pointed out that 4th respondent had filed an affidavit before the Tribunal, stating that whatever amount that he may get may be awarded in favour of the first respondent. It is argued that the quantum of compensation awarded is really on the lower side, and the first respondent is entitled to get more compensation.

8. As already stated in column Nos.25 and 26 of the Original Petition, the first respondent had clearly admitted that he had filed the application only because of the refusal on the part of the 4th respondent to file an application claiming compensation. It is admitted that the 4th respondent was the R.C. Owner of the vehicle , and he had promised to file an application, but did not file an application.

According to the first respondent, it is the next interested person entitled to apply for compensation. The definition of the word '*owner*' given under the Motor Vehicles Act, reads as follows:-

> **"2. Definitions:--** In this Act, unless the context otherwise requires:-
>
> xxxxxx xxxxxxx xxxxxxx
>
> (30) "**Owner**" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase, agreement or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

The person in whose name the motor vehicle stand registered is the owner. If the registered owner is a minor, his guardian is the owner. The definition also deals with a motor vehicle, which is the subject of an hire purchase. It provides that in respect of a vehicle which is the subject of an hire purchase or an agreement of lease, or an agreement of hypothecation, the person in possession of the vehicle under that agreement is competent.

9. In Annexure-A1 hire purchase agreement, it is stated as follows:-

> "23. Until the vehicle lawfully become the property of the Hirer under the provisions of Agreement it shall remain the absolute property of the Owner, and the Hirer shall have no right or interest in the same other than that of Hirer under this Agreement, liable to pay hire, damages etc. "

10. In **Sundaram Finance Ltd., v The State of Kerala** (AIR 1966 SC 1178), the Apex Court, while interpreting a Hire Purchase agreement, has held that essentially it is a loan and not a sale.

11. Counsel for the appellant also relied on a decision reported in **Oriental Insurance Co. Ltd. v. Vasudevan Nair** (2001 (1) KLT 941), a Division Bench of this Court held that Hire Purchaser is the owner in possession of the motor vehicle , even though he will become full owner only when he pays last instalment.

12. The learned counsel appearing for the respondent has relied on the decision reported in **Amarchand Chajir v. Sub Inspector of Police** (2000 (3) KLT 549), in which a learned Single

Judge of this Court held that in case of hire purchase agreement, the financier continues to be the owner of the goods sold till the hirer has paid the entire hire purchase amount and the property in the goods passed to the hirer after exercising the option of complying with all the terms of the agreement.

13. The learned counsel appearing for the respondent also relied on the decision reported in **K.L.Johar & Co. v. Deputy Commercial Tax Officer** (AIR 1965 SC 1082), wherein the Apex Court was called upon to decide the difference between the direct sale and hire purchase sale. The relationship between the financier and the purchaser was not a matter which arose for consideration in that case, and it was not considered also. In view of the principles laid down in Sundaram Finance Ltd.'s case and Vasudevan Nair's case, stated above, it is not possible to accept the contention of the respondent that the financier is the owner till the last instalment is paid.

14. The learned counsel appearing for the respondent further relied on the decision reported in **Said Mohammed v. Rema** (1995 (2) KLT 343), in which, a Division Bench of this Court considered

the scope of definition of the word 'Owner'. The principles laid down in that decision can have no application to the facts of this case.

15. Even though clause 23 of Annexure-A1 provides that first respondent will continue to be the owner, that will not bind a stranger to that transaction. So, it is not possible to hold that in view of such a clause in Annexure A1, the context otherwise requires. The first respondent firm is a financier who advances loan, and it has no locus standi to maintain an action claiming compensation. The affidavit filed by the 4th respondent authorising the first respondent to collect compensation can be treated as a letter of subrogation. Even in such a case, the subrogee is not entitled to maintain an action without the original owner. If the 4th respondent himself have transposed as an additional respondent in this case, the position would have been different. He also filed a petition claiming compensation which was subsequently withdrawn, after executing the agreement entered into between himself and the first respondent. The first respondent has no locus standi to maintain an action against the first respondent. Hence, the finding of the Tribunal is illegal and unsustainable.

16. In view of my finding that the first respondent is not entitled to file an Original Petition claiming compensation as owner, this award of the Tribunal is liable to be set aside. I do so. The appeal is only to be allowed.

In the result, the appeal is allowed. The award passed by the Tribunal allowing O.P.(M.V.) No.931/93 is set aside and the Original petition is dismissed.

**K.PADMANABHAN NAIR,**
**JUDGE**

**nj.**

**K.PADMANABHAN NAIR, J.**

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M.F.A.No. 159 of 2002

**J U D G M E N T**

Dated: 8th October, 2007.

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